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4 CORREY MITCHELL,
5 Plaintiff,
6 v.
7 CRAMER, et al.,
8 Defendants.

9 Case No. 23-cv-00141-JSW

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12 **ORDER OF PARTIAL DISMISSAL
AND OF SERVICE**

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17 **INTRODUCTION**

18 Plaintiff, a California prisoner proceeding pro se, filed this civil rights case under 42
19 U.S.C. § 1983 against officials at Salinas Valley State Prison (“SVSP”). He has been granted
20 leave to proceed in forma pauperis in a separate order. For the reasons discussed below, certain
21 claims are dismissed, and the complaint is ordered served on Defendants based on the retaliation
22 claim that is, when liberally construed, cognizable.

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26 **ANALYSIS**

27 A. **STANDARD OF REVIEW**

28 Federal courts must engage in a preliminary screening of cases in which prisoners seek
redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C.
1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims
which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek
monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se
pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th
Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the
claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the

1 statement need only ""give the defendant fair notice of what the . . . claim is and the grounds upon
2 which it rests.""" *Erickson v. Pardus*, 127 S. Ct. 2197, 2200 (2007) (citations omitted). Although
3 in order to state a claim a complaint "does not need detailed factual allegations, . . . a plaintiff's
4 obligation to provide the 'grounds of his 'entitle[ment] to relief' requires more than labels and
5 conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . .
6 Factual allegations must be enough to raise a right to relief above the speculative level." *Bell*
7 *Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint
8 must proffer "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974.

9 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1)
10 that a right secured by the Constitution or laws of the United States was violated, and (2) that the
11 alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*,
12 487 U.S. 42, 48 (1988).

13 **B. LEGAL CLAIMS**

14 Plaintiff claims that Defendants retaliated against him for filing grievances, in violation of
15 his First Amendment rights. "Within the prison context, a viable claim of First Amendment
16 retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action
17 against an inmate (2) because of (3) that prisoner's protected conduct, and that such action
18 (4) chilled the inmate's exercise of his First Amendment rights, and (5) the action did not
19 reasonably advance a legitimate correctional goal." *Rhodes v. Robinson*, 408 F.3d 559, 567-68
20 (9th Cir. 2005). A prisoner may not be retaliated against for using such procedures. *Id.* at 567.

21 Plaintiff's claim that Defendants Cramer and Meredith retaliated against him by relieving
22 him of his job assignment because of a grievance he filed is, when liberally construed, cognizable.
23 Plaintiff also alleges that Cramer advised him not to file grievances in the future in order to get a
24 job does not state a separate cognizable retaliation because it does not allege any separate adverse
25 action against Plaintiff.

26 Plaintiff also claims that Defendants violated his right to due process by not following
27 prison regulations relating to removing him from his job assignment. The right to due process is
28 not implicated by losing a prison job. *See Hoptowit v. Ray*, 682 F.2d 1237, 1254-55 (9th Cir.

1 1982) (no constitutional right to job); *Rizzo v. Dawson*, 778 F.2d 527, 530 (9th Cir. 1985) (no right
2 to vocational course for rehabilitation). Accordingly, this claim is not cognizable.

3 CONCLUSION

4 For the reasons set out above,

- 5 1. The due process and one of the retaliation claims are DISMISSED, as explained above.
6 2. Defendants Assistant Principal Cramer and Lieutenant Meredith shall be served at
7 Salinas Valley State Prison.

8 Service shall proceed under the California Department of Corrections and Rehabilitation's
9 (CDCR) e-service program for civil rights cases from prisoners in CDCR custody. In accordance
10 with the program, the clerk is directed to serve on CDCR via email the following documents: the
11 Amended Complaint, this Order, a CDCR Report of E-Service Waiver form, and a summons. The
12 clerk also shall serve a copy of this order on the plaintiff.

13 No later than 40 days after service of this order via email on CDCR, CDCR shall provide
14 the court a completed CDCR Report of E-Service Waiver advising the court which defendant(s)
15 listed in this order will be waiving service of process without the need for service by the United
16 States Marshal Service (USMS) and which defendant(s) decline to waive service or could not be
17 reached. CDCR also shall provide a copy of the CDCR Report of E-Service Waiver to the
18 California Attorney General's Office which, within 21 days, shall file with the court a waiver of
19 service of process for the defendant(s) who are waiving service.

20 Upon receipt of the CDCR Report of E-Service Waiver, the clerk shall prepare for each
21 defendant who has not waived service according to the CDCR Report of E-Service Waiver a
22 USM-205 Form. The clerk shall provide to the USMS the completed USM-205 forms and copies
23 of this order, the summons, and the operative complaint for service upon each defendant who has
24 not waived service. The clerk also shall provide to the USMS a copy of the CDCR Report of E-
25 Service Waiver.

- 26 3. The Defendants **shall** file an answer in accordance with the Federal Rules of Civil
27 Procedure.
28 4. In order to expedite the resolution of this case:

United States District Court
Northern District of California

1 a. No later than **91 days** from the date this order is filed, the remaining defendants,
2 including those who have been ordered served above, shall file a motion for summary judgment or
3 other dispositive motion. If defendants are of the opinion that this case cannot be resolved by
4 summary judgment, they shall so inform the court prior to the date the summary judgment motion
5 is due. All papers filed with the court shall be promptly served on the plaintiff.

6 b. Plaintiff's opposition to the dispositive motion, if any, shall be filed with the
7 court and served upon defendants no later than **28 days** from the date of service of the motion.
8 Plaintiff must read the attached page headed "NOTICE -- WARNING," which is provided to him
9 pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc), and *Klingele v.*
10 *Eikenberry*, 849 F.2d 409, 411-12 (9th Cir. 1988).

11 c. Defendants **shall** file a reply brief no later than **14 days** after the date of service
12 of the opposition.

13 d. The motion shall be deemed submitted as of the date the reply brief is due. No
14 hearing will be held on the motion unless the court so orders at a later date.

15 e. Along with his motion, defendants shall file proof that they served plaintiff the
16 *Rand* warning at the same time they served him with their motion. Failure to do so will result in
17 the summary dismissal of their motion.

18 5. All communications by the plaintiff with the court must be served on defendants, or
19 defendants' counsel once counsel has been designated, by mailing a true copy of the document to
20 defendants or their counsel.

21 6. Discovery may be taken in accordance with the Federal Rules of Civil Procedure. No
22 further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16-1 is required
23 before the parties may conduct discovery.

24 Plaintiff is reminded that state prisoners inmates may review all non-confidential material
25 in their medical and central files, pursuant to *In re Olson*, 37 Cal. App. 3d 783 (Cal. Ct. App.
26 1974); 15 California Code of Regulations § 3370; and the CDCR's Department Operations
27 Manual §§ 13030.4, 13030.16, 13030.16.1-13030.16.3, 13030.21, and 71010.11.1. Requests to
28 review these files or for copies of materials in them must be made directly to prison officials, not

to the court.

7. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

IT IS SO ORDERED.

Dated: February 7, 2023

JEFFREY S. WHITE
United States District Judge

United States District Court
Northern District of California

NOTICE -- WARNING (SUMMARY JUDGMENT)

If Defendants move for summary judgment, they are seeking to have your case dismissed. A motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure will, if granted, end your case.

Rule 56 tells you what you must do in order to oppose a motion for summary judgment. Generally, summary judgment must be granted when there is no genuine issue of material fact-- that is, if there is no real dispute about any fact that would affect the result of your case, the party who asked for summary judgment is entitled to judgment as a matter of law, which will end your case. When a party you are suing makes a motion for summary judgment that is properly supported by declarations (or other sworn testimony), you cannot simply rely on what your complaint says. Instead, you must set out specific facts in declarations, depositions, answers to interrogatories, or authenticated documents, as provided in Rule 56(e), that contradict the facts shown in Defendant's declarations and documents and show that there is a genuine issue of material fact for trial. If you do not submit your own evidence in opposition, summary judgment, if appropriate, may be entered against you. If summary judgment is granted, your case will be dismissed and there will be no trial.